

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100555
	:	TRIAL NO. B-0809419B
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CARMEN GORRASI,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On April 27, 2009, Carmen Gorrasi was convicted of robbery in violation of R.C. 2911.02(A)(2), a felony of the second degree.² He appealed, and this court ultimately held that the trial court had not properly advised Gorrasi that he was subject to a mandatory three years of postrelease control.³ We remanded his case for the trial court to correct its judgment by “employing the sentence-correction mechanism of R.C. 2929.191.”⁴ In all other respects, we affirmed the judgment of the trial court.

On August 16, 2010, the trial court held a hearing pursuant to R.C. 2929.191 and personally advised Gorrasi of the following: “You also need to be aware that you will be supervised after you leave prison, which is referred to as post-release control, for three

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

² R.C. 2911.02(B).

³ *State v. Gorassi*, 1st Dist. No. C-090292, 2010-Ohio-2875 (“*Gorrasi I*”).

⁴ Id. at ¶13 (quoting *State v. Williams*, 1st Dist. No. C-081148, 2010-Ohio-1879, at ¶24).

years.”⁵ The court further stated in its judgment entry that “as part of the sentence in this case, the defendant shall be supervised by the adult parole authority after defendant leaves prison, which is referred to as post-release control, for three (3) years.” Gorrasi now appeals, raising four assignments of error. For ease of discussion, we consider his assignments of error out of order.

In his first assignment of error, Gorrasi asserts that the trial court erred in not properly advising him of postrelease-control sanctions. We are not persuaded.

If a court determines at a sentencing hearing that a prison term is necessary or required, the court shall notify the offender that he or she “will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced” for various offenses, including second-degree felonies.⁶ Under R.C. 2967.28, “a period of post-release control * * * for an offender shall be * * * [f]or a felony of the second degree that is not a felony sex offense, three years.”

Gorrasi argues that when the trial court advised him that “you *will* be supervised after you leave prison,”⁷ the court failed to notify him of the mandatory nature of postrelease control. He points to R.C. 2967.28, which provides that the postrelease-control period for second-degree felonies “*shall*” be three years.⁸

We reject this argument. The trial court’s wording sufficiently demonstrated the mandatory nature of postrelease control. And moreover, even if we were to assume a relevant legal or grammatical distinction between “will and “shall” in this instance, R.C. 2929.19 requires the sentencing court to notify the offender that he or she “*will* be

⁵ T.p. 17.

⁶ R.C. 2929.19(B)(3)(c).

⁷ T.p. 17 (emphasis added).

⁸ R.C. 2967.28(B) (emphasis added).

supervised * * * after the offender leaves prison.”⁹ Accordingly, we overrule Gorrasi’s first assignment of error.

We next consider Gorrasi’s fourth assignment of error in which he argues that the trial court erred in not conducting a full resentencing hearing. We disagree.

Although we remanded Gorrasi’s case for the trial court to correctly advise him that he was subject to a mandatory three years of postrelease control, we affirmed his conviction in all other respects. Under R.C. 2929.191, the trial court “was not authorized to conduct a de novo resentencing” on remand.¹⁰ We, therefore, overrule Gorrasi’s fourth assignment of error.

Finally, we consider Gorrasi’s second and third assignments of error together. In his second assignment of error, Gorrasi asserts that the trial court erred in denying his motion for resentencing. And in his third assignment of error, Gorrasi asserts that the trial court erred in denying his motion to waive the court costs imposed at his initial sentencing.

Because Gorrasi appeals from a hearing that was limited to the proper imposition of postrelease control, the scope of this appeal is limited to that issue.¹¹ Res judicata still applies to the other aspects of the merits of his conviction, “including the determination of guilt and the lawful elements of the ensuing sentence.”¹² Thus, claims that were raised or could have been raised on direct appeal in *Gorrasi I* are now barred.¹³

⁹ R.C. 2929.19(B)(3)(c) (emphasis added).

¹⁰ *State v. Brown*, 1st Dist. Nos. C-100309 and C-100310, 2011-Ohio-1029, at ¶8. See *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at ¶26 (holding that “the new sentencing hearing to which an offender is entitled * * * is limited to proper imposition of postrelease control”).

¹¹ *Fischer* at paragraph four of the syllabus.

¹² *Id.* at paragraph three of the syllabus.

¹³ *State v. Davis*, 119 Ohio St.3d 422, 2008-Ohio-4608, 894 N.E.2d 1221, at ¶6

Because these two assignments of error concern issues that Gorrasi could have raised in his direct appeal, he cannot raise them in this appeal. For that reason, we overrule his second and third assignments of error.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HILDEBRANDT and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 3, 2011
per order of the Court _____.
Presiding Judge